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SUPREME COURT  
STATE OF WASHINGTON

2008 NOV 10 P 3:08

NO. 80704-3

BY RONALD R. CARPENTER

CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re the Personal Restraint Petition of:

JEFFREY BROOKS,

Petitioner.

---

ON MOTION FOR DISCRETIONARY REVIEW FROM THE  
COURT OF APPEALS, DIVISION ONE

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SUPPLEMENTAL BRIEF OF PETITIONER

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FILED AS  
ATTACHMENT TO EMAIL

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A. SUMMARY OF ARGUMENT

The trial court impermissibly imposed a sentence in which the total terms of confinement and community custody exceeded the statutory maximum for Jeffrey Brooks's offense. Mr. Brooks contends the only permissible remedy is to reduce the term of confinement, the term of community custody, or some combination of the two, until, as required by RCW 9.94A.505, the term imposed does not exceed the 120 month statutory maximum. Mr. Brooks contends any other remedy fails to comport with the Sentencing Reform Act's requirement that the trial court impose a determinate sentence, and violates the Separation of Powers provisions of both the federal and state constitutions.

B. ISSUES PRESENTED

1. The Sentencing Reform Act (SRA) generally requires a sentencing court impose a determinate sentence with respect to both confinement and supervision. RCW 9.94A.505 does not permit a court to impose a sentence in which the term of confinement plus the term of community custody exceeds the statutory maximum sentence for the offense. For each of Mr. Brooks's convictions for attempted first degree robbery the trial court imposed sentences of 120 months confinement and 18 to 36

months of community custody. Do the sentences imposed by the trial court exceed the statutory maximum of 120 months?

2. The SRA requires the sentencing court impose a determinate sentence. A determinate sentence is one "that states with exactitude the number of actual years, months, or days of total confinement . . . of community supervision." Where the trial court imposes a sentence in which the term of confinement plus the term of community custody exceeds the statutory maximum sentence but includes a notation to the effect that "the total time served may not exceed the statutory maximum," is the resulting sentence determinate?

3. The Separation of Powers Doctrine of the state and federal constitutions prohibits (1) one branch of government from encroaching on the duties of another; (2) one branch from improperly ceding its duties to another, and (3) one branch from improperly delegating a second branch's duties to the third branch. By the SRA the Legislature has established the appropriate sentences for crimes, and required sentencing courts impose a determinate sentence within the general framework of the SRA and within the specific statutory maximum sentences for each offense. The Department of Corrections (DOC), in turn, is vested only with



the authority to enforce the sentence imposed but cannot set the terms of the sentence. Where a sentencing court imposes a sentence in which the total terms of confinement and community custody exceed the statutory maximum, and rather than reduce either term the sentencing court merely makes a notation that DOC should not require the offender to serve a term beyond the statutory maximum, has the trial court improperly ceded its obligation to impose the sentencing terms to the executive branch?

C. STATEMENT OF THE CASE

Mr. Brooks was convicted of three counts of attempted first degree robbery with an offender score of 9 and resulting standard range of 96.75 to 128.25. Appendix at 1-2. Attempted first degree robbery is a Class B felony, and thus has a maximum penalty of 10 years. RCW 9A.20.021(1)(b); RCW 9A.28.020(3)(b); RCW 9A.56.200(2). The trial court imposed a sentence of 120 months confinement and 18 to 36 months of community custody. Appendix at 5-7.

Mr. Brooks filed a motion for relief from judgment, contending his sentence was improper because the combined terms of confinement and community custody exceed the statutory maximum. Appendix at 14-18. The trial court transferred the case

to the Court of Appeals to be treated as a Personal Restraint Petition. Appendix at 19.

The Court of Appeals denied the petition. However, the court reached its conclusion based in the mistaken belief that the maximum penalty for attempted first degree robbery was life rather than 10 years. Appendix at 20-22.

Mr. Brooks filed a motion for discretionary review. The commissioner conditionally denied review, but ordered the trial court "to file an amended judgment and sentence specifying that Mr. Brooks total period of confinement may not exceed . . . 120 months."

Rather than file an amended judgment and sentence, as required by the commissioner's ruling, on June 5, 2008, the trial court entered an "ORDER Amending Judgment and Sentence" which was not attached to a new Judgment and Sentence nor the original one and provided:

Section 4.5(a) shall be amended to read: The total of the term of incarceration and the term of community custody for each counts I, II, and III shall not exceed the statutory maximum of 120.

Appendix at 23.

On June 18, 2008, Mr. Brooks filed a motion to modify the commissioner's conditional ruling. This Court granted Mr. Brooks's motion and granted discretionary review.

D. ARGUMENT

THE SENTENCE IMPOSED EXCEEDS THE TRIAL COURT'S STATUTORY AUTHORITY AND VIOLATES THE SEPARATION OF POWERS DOCTRINE

1. The SRA requires a sentencing court impose a determinate sentence in which the combined terms of confinement and supervision do not exceed the statutory maximum. "A trial court only possesses the power to impose sentences provided by law." In re the Personal Restraint Petition of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). Where a statutory term, phrase or directive is unambiguous, its meaning must be taken from its plain language. State v. Chester, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997) (citing Cherry v. Municipality of Metro. Seattle, 116 Wn.2d 794, 799, 808 P.2d 746 (1991)).

RCW 9.94A.505(5) provides:

Except as provided under RCW 9.94A.750(4) and 9.94A.753(4) a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

The plain language of this statute bars a court from imposing a total term of confinement plus community custody which exceeds the statutory maximum for the offense. State v. Zavala-Reynoso, 127 Wn.App. 119, 123, 110 P.3d 827 (2005); see also, State v. Sloan, 121 Wn.App. 220, 87 P.3d 1214 (2004); State v. Vanoli, 86 Wn.App. 643, 937 P.2d 1166 (1997).

As the commissioner's ruling recognized, the sentence originally imposed was contrary to RCW 9.94.505.<sup>1</sup> However, the amended sentence is equally improper.

Any remedy addressing an error under RCW 9.94A.505 must first, of course comport with the language of that statute. But ensuring the sentence complies with RCW 9.94A.505 is not the only concern. In addition to the limitation imposed in RCW 9.94A.530, the sentence must also be determinate.

"Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an

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<sup>1</sup> Mr. Brooks also contends that because his sentence exceeds that which the SRA permits it violates his Sixth Amendment right to a jury as set forth in Blakely v. Washington, 542 Wn.2d, 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). While he does not present additional argument on that point in this supplemental brief, he does not abandon that claim. However, this Court's determination of what RCW 9.94A.505 requires will determine whether his sentence exceeds the requirements of that statute and thus will render a decision on his Blakely claim either moot or cumulative.

offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence, defined as a specific time period of total confinement, partial confinement, community supervision, or community service work, and/or a fine of a specified amount.

RCW 9.94A.030(21). Finally, the sentence must comply with constitutional limitations. The “remedy” allowed in the commissioner’s conditional ruling fails to satisfy each of these requirements.

2. The modified judgment still “imposes” a sentence which exceeds the statutory maximum and is indeterminate. At the State’s urging, the commissioner’s ruling relied upon the reasoning of Sloan, 121 Wn.App. at, 223-24, to conclude that while the original judgment imposed a sentence in violation of RCW 9.94A.505, it could be remedied by way of amending the judgment to parrot the language of RCW 9.94A.505. Ruling at 2.

Sloan and Vanoli, relied upon the provisions of RCW 9.94A.700(3). RCW 9.94A.700(3) provides:

The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist

entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

Sloan reasoned that because an inmate may receive good time, he or she could still serve all or some of the community custody imposed, and that the only requirement was that in no instance could the inmate serve a term in excess of the statutory maximum.

This conclusion ignores three important facts. First, on its face the judgment still “imposes” a term of confinement in excess of the statutory maximum for the offense contrary to RCW 9.94A.505. Second, the sentence imposed is unlawfully indeterminate. Finally, the court’s conclusion unlawfully delegates to the Department of Corrections the authority to impose a sentence in violation of the Separation of Powers Doctrine.

The plain language of RCW 9.94A.505(5) provides a court “court may not impose” a total term of confinement plus community custody which exceeds the statutory maximum for the offense.

Zavala-Reynoso recognized this stating that a judgment and sentence that violates RCW 9.94A.505A is invalid on its face.

The term “valid on its face” has been interpreted to mean “without further elaboration.” In re Personal Restraint of Stoudmire, 141 Wn.2d 342, 353, 5 P.3d

1240 (2000) (quoting State v. Ammons, 105 Wn.2d 175, 188, 713 P.2d 719 (1986)). Here, Mr. Zavala-Reynoso's community custody term (9-12 months), plus his standard range sentence (114 months), exceeds his statutory maximum term. Thus, the total (123-136 months) on its face exceeds the 120 month maximum term.

Zavala-Reynoso, 127 Wn.App. at 124. Zavala-Reynoso rejected the State's argument that Mr. Zavala-Reynoso would likely receive good time credit, which would result in him not being sentenced for the full term of incarceration provided for by the standard range and the maximum term, and that therefore it could not be said that his total sentence violated the statutory maximum.

[T]he State argues because Mr. Zavala-Reynoso will likely receive good time credit, reducing his sentence, he may still not be incarcerated for the full standard range sentence. Therefore, the State reasons this issue is not ripe. We disagree. Viewed from the outset, the sentence exceeds the maximum term.

(Emphasis added.) Zavala-Reynoso, 127 Wn.App. at 124. The court therefore remanded for resentencing, stating, "Since the sentencing court imposed a sentence exceeding Mr. Zavala-Reynoso's statutory maximum, we vacate his sentence and remand for resentencing in a manner consistent with this opinion." Zavala-Reynoso, 127 Wn.App. at 124.

The same is true here. Regardless of the notation on the modified judgment, the trial court "imposed" a sentence which exceeds the statutory maximum. Nowhere in RCW 9.94A.505 did the legislature permit the imposition of an unlawful sentence so long as the trial court believes it will not actually be served. In fact, such speculation is contrary to the requirement that the sentence be determinate. Moreover, this speculative sentencing has been rejected in other similar contexts. See State v. Sledge, 133 Wn.2d 828, 947 P.2d 1199 (1997); State v. S.H., 75 Wn.App. 1, 877 P.2d 205 (1994); and State v. Bourgeois, 72 Wn.App. 650, 866 P.2d 43 (1994). These cases provide the juvenile court cannot be allowed to set the term for a manifest injustice disposition, while taking into consideration the fact that the juvenile could be released early. In each of these cases, the courts held that the possibility that a juvenile may be released before the maximum term of a standard range disposition was not a proper basis for setting the term of a manifest injustice disposition. See Sledge, 133 Wn.2d at 846; S.H., 75 Wn.App. at 15; Bourgeois, 72 Wn.App. at 661.

Nonetheless, the commissioner concluded "the only limit . . . is that the total time served in confinement and community custody cannot exceed the statutory maximum." Ruling at 2. But RCW



9.94A.505 does not apply to the sentence “served” rather it expressly applies to the sentence “imposed.” This is a fundamentally important distinction. The former is a backward looking sentencing scheme reminiscent of the indeterminate sentencing model employed in Washington prior to 1984. The latter, however, is the central tenant of determinate sentencing. Chief among the legislative purposes for enacting the SRA was to ensure “the sentence imposed by the judge is determinate, its contents known at the time it is imposed and not subject to later modification.” D. Boerner, Sentencing in Washington, p. 1-2 (1985). Professor Boerner further explained this requirement, “Judges are required to fix all of the terms and conditions of a sentence at the time the sentence is imposed.” Id. p1-3. Only by ensuring the sentence “imposed” does not exceed the statutory maximum can one know with exactitude the total term of confinement and supervision at the time is imposed.

Because RCW 9.94A.505 plainly prohibits the sentence “imposed” here, the sentence imposed by the modified judgment and sentence is unlawful regardless of whether the sentence is ultimately served. Thus, the commissioner’s “remedy” is insufficient.

3. Imposing an unlawful sentence on the hope that DOC will not enforce it violates the Separation of Powers Doctrine. The separation of powers doctrine is derived from the Constitution's distribution of governmental authority into three branches. State v. Moreno, 147 Wn.2d 500, 505, 58 P.3d 265 (2002). Each branch of government may only exercise the powers it is given. One branch is not permitted to encroach upon the fundamental function of another. Id.

Like the federal constitution, Washington's constitution does not contain a formal separation of powers clause. Carrick v. Locke, 125 Wn.2d 129, 134-35, 882 P.2d 173 (1994). Instead, the state constitution's division of political power among the people, legislature, executive, and judiciary has been presumed to embody vital constitutional separation of powers principles. See In Re Juvenile Director, 87 Wn.2d 232, 238-40, 552 P.2d 163 (1976); Const. Art. I, § 1; Const. Art. II, § 1; Const. Art. III, § 2; Const. Art. IV, § 1. The doctrine serves to ensure that the "fundamental functions" of each branch remain inviolate. Carrick, 125 Wn.2d at 135.

"The fixing of legal punishments for criminal offenses is a legislative function." Ammons, 105 Wn.2d at 180. The Legislature

delegated sentencing authority to the court in the sentencing reform act (SRA) within the limits set by the statute. Id. at 181. The constitutional separation of powers doctrine precludes the judiciary or executive branch from asserting sentencing powers not expressly granted by the Legislature. Id. at 180.

The Legislature historically has set the parameters of sentencing laws and granted the court specific authority to impose sentences within its guidelines. See State v. Le Pitre, 54 Wash. 166, 169, 103 P. 27 (1909) (legislature exercises control over sentences by setting minimum and maximum terms and giving court broad discretion within these limits); State v. Mulcare, 189 Wash. 625, 628, 66 P.2d 360 (1937) (legislative function to fix penalties); State v. Monday, 85 Wn.2d 906, 909-10, 540 P.2d 416 (1975) (legislature, not judiciary, has power to alter sentencing process).

Nothing in the SRA suggests the Legislature intended sentencing courts to permit the executive branch, in this case the Department of Corrections (DOC), to set the term of the sentence.<sup>2</sup> DOC's duty and function is to enforce the sentence imposed. See

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<sup>2</sup> An obvious exception, and one expressly permitted by statute, is the imposition of indeterminate sentences for certain sex offenders pursuant to RCW 9.94A.712.

State v. Chapman, 105 Wn.2d 211, 713 P.2d 106 (1986). Thus, the fact that DOC may or may not find an inmate qualifies for earned early release does not alleviate the sentencing court's obligation to impose a determinate sentence, and in this case, one that complies with RCW 9.94A.505.

The modified judgment leaves to DOC "the responsibility for assuring the sentence does not exceed the statutory maximum." State v. Davis, 2008 Wash.App. LEXIS 2263, 11-12. In Davis, the Court of Appeals recently affirmed the imposition of an exceptional sentence below the standard range based upon the sentencing court's efforts to comply with RCW 9.94A.505. Thus, the sentencing court imposed a lesser term of 36 months confinement (rather than a standard range of 43-57 months) and 24 months community custody (rather than a standard range of 36-48 months). Id. at 2-4. The Court of Appeals rejected the State's argument that the trial court was obligated to follow the approach in Sloan, and employed by the commissioner in this case. In doing so the court noted that because the remedy in Sloan relied upon DOC to ensure the correct sentence was served:

We believe it is better for both the offenders and the Department to have the trial court impose a sentence that is clear to all from the outset. Given the number

of offenders and the complexity of many sentences imposed under the SRA, a clear mandate from the trial court eliminates the chance of legal errors in implementing the trial court's sentence

Davis, at 12.<sup>3</sup> But Davis does not go far enough. Rather than merely further some laudable goals, the rationale of Davis is precisely the rationale of the SRA and expresses the reasoning for the elimination of indeterminate sentencing in the first place. Compare Boerner, at. 1-2 (1985) (chief among the legislative purposes for enacting the SRA was to that the "the sentence imposed by the judge is determinate, its contents known at the time it is imposed and not subject to later modification.") Thus, rather than merely preferable, the sentence in Davis was precisely that which the SRA requires. Moreover, it is the only sentence in which the sentencing court, and not DOC, is exerting its authority, delegated by the SRA, to fix the proper sentence.

In addition to, or because of, the inherently uncertain nature of the terms of sentences resulting from Sloan the only means for an offender to challenge DOC's improper implementation of the SRA is by way of Personal Restraint Petition. This is because the

offender will not begin serving the improper period of confinement or supervision until 5 or 10 years after sentencing, and long after the time for direct appeal has passed. This limitation on and delay of appellate review further defeats the intended finality of a determinate sentence.

Mr. Brooks does not contend a sentencing court must impose an “exceptional” sentence. Rather, Mr. Brooks contends RCW 9.94A.505 merely caps the standard range of confinement and supervision. Thus, a sentence imposed, as in Davis, is not “exceptional” because it is dictated by the plain terms of the SRA. Instead RCW 9.94A.505 operates like the provisions of RCW 9.94A.533 directing that where the addition of an enhancement to the standard range cause the standard range to exceed the statutory maximum the statutory maximum becomes the presumptive sentence. Thus, in a circumstance such as this, a sentencing court's compliance with RCW 9.94A.505 should not require the court to engage in the procedure dictated for the

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<sup>3</sup> The errors are compounded where as here the trial court did not enter a new judgment upon which DOC can rely in the future to ensure the sentence is properly implemented. Rather, the trial court entered a separate order amending the judgment, not attached to the judgment, and thus creating one more possible avenue for misinterpretation of the already uncertain sentence.

imposition of an exceptional sentence, nor open the sentence to attack by way of an appeal by the State.

In the absence of a delegation of authority to DOC to fix the term of the sentence, DOC may not presume it has such power. See In re Sentence of Chatman, 59 Wn.App. 258, 796 P.2d 755 (1990). In Chatman, DOC questioned whether a sentencing court issued a lawful sentence, first by asking the judge to reconsider the sentence and then by seeking review in the Court of Appeals pursuant to RCW 9.94A.585(7). RCW 9.94A.585(7) was enacted for the purpose of stopping DOC from disregarding sentences it did not believe were correctly imposed. Id. at 264. The statute was intended to provide a mechanism for addressing sentencing errors, because courts had “repeatedly admonished the department for disregarding sentences.” Id.

By imposing a sentence in excess of its statutory authority, and then delegating to DOC the authority to fix the actual term, the trial court violated the Separation of Powers Doctrine.

E. CONCLUSION

For the reasons above, the “remedy” provided in the commissioner’s ruling is no remedy at all. The remedy fails to comply with the terms of RCW 9.94A.505, fails to impose a determinate sentence, and violates the Separation of Powers doctrine.

Respectfully submitted this 10th day of November, 2008.

A handwritten signature in black ink, appearing to read "Gregory C. Link", is written over a horizontal line.

GREGORY C. LINK – 25228  
Washington Appellate Project  
Attorney for Petitioner



## APPENDIX

FILED IN OPEN COURT  
10-18 2006  
 WHATCOM COUNTY CLERK

[Signature]  
 Deputy

ORIGINAL

SUPERIOR COURT OF WASHINGTON  
 COUNTY OF WHATCOM

STATE OF WASHINGTON, Plaintiff,

vs.

JEFFREY SCOTT BROOKS, Defendant.

DOB: May 10, 1964

No. 05-1-01763-8

JUDGMENT AND SENTENCE (FJS)

PRISON

[XX] CLERK'S ACTION REQUIRED-para 4.1 (LFO'S),  
 4.3 (NCO)

*JDSwc*

I. HEARING

1.1 A sentencing hearing was held and the defendant, Jeffrey Scott Brooks, the defendant's lawyer, Carl Munson, and the Deputy Prosecuting Attorney, Elizabeth Gallery, were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on October 4, 2006 by JURY - VERDICT of:

COUNT	CRIME	RCW	DATE OF CRIME
I	ATTEMPTED ROBBERY IN THE FIRST DEGREE	9A.28.020 and 9A.56.200(1)(a) and 9A.56.190	November 13, 2005
II	ATTEMPTED ROBBERY IN THE FIRST DEGREE	9A.28.020 and 9A.56.200(1)(a) and 9A.56.190	November 13, 2005
III	ATTEMPTED ROBBERY IN THE FIRST DEGREE	9A.28.020 and 9A.56.200(1)(a) and 9A.56.190	November 13, 2005
IV	RESIDENTIAL BURGLARY	9A.52.025(1)	November 13, 2005

as charged in the Amended Information.

Judgment and Sentence (JS) (Felony)  
 (RCW 9.94A.500, .505) WPF CR 84.0400 (6/2002) *kle*  
 JEFFREY SCOTT BROOKS

06-9-03119-1

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2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	A or J	TYPE OF CRIME
SEE ATTACHED CRIMINAL HISTORY SHEET				

- ☒ Additional criminal history is attached in Appendix 2.2. *Exhibit A*
- ☐ The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525
- ☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- ☐ The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements *	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed no or after July 1, 2000. For crimes committed prior to July 1, 2000 see paragraph 6(3).)	MAXIMUM TERM
I	9	IX	96.75-128.25		120 months	18 to 36 months	10 yrs/\$20,000
II	9	IX	96.75-128.25		120 months	18 to 36 months	10 yrs/\$20,000
III	9	IX	96.75 - 128.25		120 months	18 to 36 months	10 yrs/\$20,000
IV	9	IV	63 - 84 months		84 months	18 to 36 months	10 yrs/\$20,000

\*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom. see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, RCW 9.94A.533(8).

- ☐ Additional current offense sentencing data is attached in Appendix 2.3.

2.4 ☐ EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

- ☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):
- 

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are as follows:

### III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

Judgment and Sentence (JS) (Felony)  
(RCW 9.94A.500, .505) WPF CR 84.0400 (6/2002)  
JEFFREY SCOTT BROOKS

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3.2 ☐ The Court DISMISSES Count(s)

#### IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

#### JASS CODE

\$ <u>0</u>	Restitution to:
\$	Restitution to:
\$	Restitution to:
\$	Restitution to:

RTN/RJN  
Office).

(Name and Address—address may be withheld and provided confidentially to Clerk's

PCV \$500.00  
CRC \$450.00

Victim Assessment  
Court costs, including:

RCW 7.68.035  
RCW 9.94A.760, 9.94A.505,  
10.01.160, 10.46.190

Criminal filing fee \$200.00  
Witness costs \$  
Sheriff service fees \$  
Jury demand fee \$250

FRC  
WFR  
SFR/SFS/SFW/WRF  
JFR

PUB \$1,500.00

Fees for court appointed  
attorney

RCW 9.94A.760

WFR \$

Court appointed defense  
expert and other defense  
costs

RCW 9.94A.760

FCM \$  
LDI \$

Fine  
VUCSA Fine ☐ VUCSA additional fine  
deferred due to indigency  
RCW 69.50.430  
Meth Lab Cleanup ☐ VUCSA additional fine  
deferred due to indigency  
RCW 69.50.401

RCW 9A.20.021

MTH \$

Drug enforcement fund

RCW 9.94A.760

CDF/LDI/  
FCD/NTF/  
SAD/SDI  
CLF \$  
DNA \$100.00

Crime lab fee ☐ Suspended due to indigency  
Felony DNA Collection ☐ Not imposed due to  
Fee hardship

RCW 43.43.690  
RCW 43.43.(Ch. 289 L.  
2002 § 4)

RTN/RJN \$

Emergency response costs (Vehicular Assault, Vehicular  
Homicide only, \$1000 maximum)

RCW 38.52.430

\$

TOTAL

RCW 9.94A.760

[XX] The above total does not include all restitution or other legal financial obligations, which may be set by  
later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☐ shall be set by the prosecutor

☐ is scheduled for \_\_\_\_\_.

☐ RESTITUTION. Schedule attached

All payments shall be made in accordance with the policies, procedures and schedules of the Whatcom County Clerk as supervision of legal financial obligations has been assumed by the Court. RCW 9.94A.760

☐ PAYMENT IN FULL: Defendant agrees and is hereby ordered to make payment in full within    days after the imposition of sentence to the Whatcom County Clerk for the amount due and owing for legal financial obligations and restitution.

☒ MONTHLY PAYMENT PLAN: The defendant agrees and is hereby ordered to enter into a monthly payment plan, with the Whatcom County Clerk for the amounts due and owing for legal financial obligations and restitution, immediately after sentencing. The Court hereby sets the defendant's monthly payment amount at \$100.00, which will remain in effect until such time as the defendant executes a payment plan negotiated with the Collections Deputy. The first payment of \$100.00 is due immediately after imposition of sentence or release from confinement, whichever occurs last.

During the period of repayment, the Whatcom County Clerk's Collections Deputy may require the defendant to appear for financial review hearings regarding the appropriateness of the collection schedule. The defendant will respond truthfully and honestly to all questions concerning earning capabilities, the location and nature of all property or financial assets and provide all written documentation requested by the Collections Deputy in order to facilitate review of the payment schedule. RCW 9.94A. The defendant shall keep current all personal information provided on the financial statement provided to the Collections Deputy. Specifically, the defendant shall notify the Whatcom County Superior Court Clerk's Collection Deputy, or any subsequent designee, of any material change in circumstance, previously provided in the financial statement, i.e. address, telephone or employment within 48 hours of change.

☒ DEFENDANT MUST MEET WITH COLLECTIONS DEPUTY PRIOR TO RELEASE FROM CUSTODY.

☒ The defendant shall pay the cost of services to collect unpaid legal financial obligations, which include monitoring fees for a monthly time payment plan and/or collection agency fees if the account becomes delinquent. (RCW 36.18.190)

☒ The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

☐ In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: \_\_\_\_\_. (JLR) RCW 9.94A.760

4.2 ☒ DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

☐ HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340

4.3 NO CONTACT ORDER/ORDER PROHIBITING CONTACT

*Mr. Marcus Hayes & Erika Thorsen*

[XX] The defendant shall not have contact with Wanda Sturman including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

[ ] NO POST-CONVICTION ORDER PROHIBITING CONTACT IS BEING ENTERED OR EXTENDED. ANY PRIOR ORDER ENTERED, HAVING THIS CAUSE NUMBER, TERMINATES ON THE DATE THIS JUDGMENT IS SIGNED.

4.4 OTHER:

[ ] Defendant is to be released immediately to set up jail alternatives.  
[ ] DEPORTATION. If the defendant is found to be a criminal alien eligible for release to and deportation by the United States Immigration and Naturalization Service, subject to arrest and reincarceration in accordance with law, then the undersigned Judge or Prosecutor consent to such release and deportation prior to the expiration of the sentence. RCW 9.94A.280

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

- (a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

120 months for COUNT: I, 120 months for COUNT: II, 120 months for COUNT: III, 84 months for COUNT: IV.

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data above)

OTHER:

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA, in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above in section 2.3, and except for the following which shall be served CONSECUTIVELY:

The sentence herein shall run consecutively with the sentence in but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence IMMEDIATELY unless otherwise set forth here: \_\_\_\_\_  
(should be a Monday if possible) between 1:00 p.m. and 4:00 p.m.

- (c) The defendant shall receive credit for time served prior to sentencing, including time spent in transport, if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

4.6 SUPERVISION: [XX]Community PLACEMENT/Community CUSTODY/Community SUPERVISION, as determined by DOC, for 18 to 36 months for Count I, 18 to 36 months for Count II, 18 to 36 months for Count III, 18 to 36 months for Count IV, ; or the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. [ Use paragraph 4.7 to impose community custody following work ethic camp.]

[On or after July 1, 2003, the court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or a felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.715 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(1)(a).

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent Offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)	v) Residential burglary offense	
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) The defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC; and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Defendant shall report to DOC, 1111 Cornwall Avenue, #200, Bellingham, not later than 72 hours after release from custody; and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. For sex offenses, defendant shall submit to electronic monitoring if imposed by DOC. Defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this judgment and Sentence. The defendant shall:

☒ The defendant shall not consume any alcohol.  
☒ Defendant shall comply with the No Contact provisions stated above.  
☐ Defendant shall remain of a specified geographical boundary, to wit  
☒ The defendant shall undergo an evaluation for treatment for the concern noted below AND FULLY COMPLY with all recommended treatment.

☐ Domestic Violence  
☒ Substance Abuse  
☒ Mental Health  
☐ Anger Management

☒ The defendant shall participate in the following crime related treatment or counseling services:

☒ The defendant shall comply with the following crime-related prohibitions:

Do not possess or consume illegal drugs or non-prescribed medication.

Other conditions may be imposed by the court or Department during community custody, or are set forth here:

☐ For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

- 4.7 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.
- 4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

## V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional ten years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5)
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606



5.4 **RESTITUTION HEARING.**

☐ Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

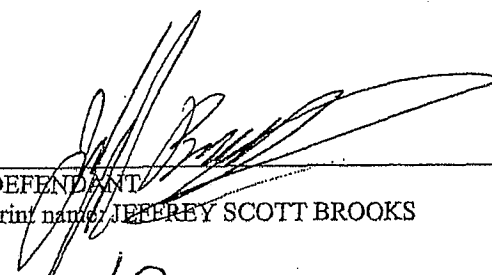
5.7 ☐ The court finds that Count(s) is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately mark the person's Washington State Driver's license or permit to drive, if any in a manner authorized by the department. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

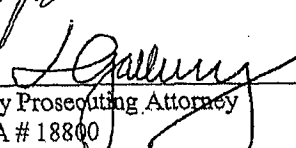
5.8 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.9 **OTHER:**

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DONE in Open Court and in the presence of the defendant this date: **October 18, 2006.**

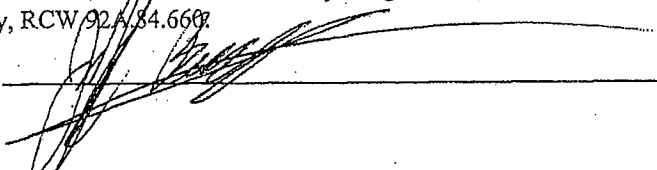
  
DEFENDANT  
Print name: JEFFREY SCOTT BROOKS

  
Deputy Prosecuting Attorney  
WSBA # 18800  
Print name: ELIZABETH GALLERY

  
JUDGE

Attorney for Defendant  
WSBA # 27297  
Print name: CARL MUNSON

**Voting Rights Statement:** I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 9A.84.660.

Defendant's signature: 

JEFFREY SCOTT BROOKS  
CAUSE NUMBER of this case: 05-1-01763-8

I, \_\_\_\_\_, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: **October 18, 2006.**

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF DEFENDANT**

SID No. \_\_\_\_\_  
(If no SID take fingerprint card for State Patrol)

Date of Birth: 05/10/64

FBI No. \_\_\_\_\_  
PCN No. 900042795

Local ID No. \_\_\_\_\_

Other \_\_\_\_\_

Alias name, SSN, DOB:

Race: White

Sex: Male

Defendant's Last Known Address: Transient

**FINGERPRINTS** I attest that I saw the same defendant who appeared in Court on this document affix his fingerprints and signature thereto.

Clerk of the Court: Sandra Hutcherson, Deputy Clerk. Dated: **October 18, 2006**

DEFENDANT'S SIGNATURE: \_\_\_\_\_

Left Thumb



Right Thumb



SUPERIOR COURT OF WASHINGTON  
COUNTY OF WHATCOM

STATE OF WASHINGTON, Plaintiff,

vs.

JEFFREY SCOTT BROOKS, Defendant.

No. 05-1-01763-8

WARRANT OF COMMITMENT

DOB: May 10, 1964

THE STATE OF WASHINGTON

TO: THE SHERIFF OF WHATCOM COUNTY

The defendant, JEFFREY SCOTT BROOKS, has been convicted in the Superior Court of the State of Washington of the crime or crimes of ATTEMPTED ROBBERY IN THE FIRST DEGREE, ATTEMPTED ROBBERY IN THE FIRST DEGREE, ATTEMPTED ROBBERY IN THE FIRST DEGREE and RESIDENTIAL BURGLARY and the Court has ordered that the defendant be punished by serving the determined sentence of 120 months for Count I, 120 months for Count II, 120 months for Count III, 84 months for Count IV.

This sentence is CONCURRENT with the sentence imposed in cause number (s).

Defendant shall receive credit for time served of Since incarceration November 13<sup>th</sup>, 2005 as of \_\_\_\_\_, and credit for any additional time served beyond that date until defendant is transported to the Department of Corrections.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By Direction of the HONORABLE

IRA UHRIG

JUDGE

DATED: October 18, 2006

N.F. JACKSON, JR., Clerk

By:

Sinda Hutcherson  
Deputy Clerk

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 00-1-11104-1 SEA

vs.

JUDGMENT AND SENTENCE,  
(FELONY) - APPENDIX B,  
CRIMINAL HISTORY

JEFFREY SCOTT BROOKS

Defendant,

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
BURGLARY 2	07/09/1982	ADULT	821000336	WASH
BURGLARY 2	07/02/1982	ADULT	821000964	WASH
BURGLARY 2	02/24/1987	ADULT	861007398	SNOH CO
ASSAULT 2	02/24/1987	ADULT	861008289	SNOH CO
BURGLARY 2	02/24/1987	ADULT	861008289	SNOH CO
POSSESSION OF STOLEN PROPERTY 2	08/17/1989	ADULT	891001151	WASH
BURGLARY 2	08/17/1989	ADULT	891001151	WASH
FORGERY	08/17/1989	ADULT	891001151	WASH
FORGERY	12/01/1989	ADULT	891007210	WASH
BURGLARY 2	03/02/1983	ADULT	921000200	LINCOLN WA
THEFT 2	03/02/1993	ADULT	921000200	LINCOLN WA
THEFT 2	03/02/1993	ADULT	921000200	LINCOLN WA
POSSESSION OF STOLEN PROPERTY 2	07/17/1992	ADULT	921000200	LINCOLN WA
POSSESSION OF CONTROLLED SUBSTANCE BY A PRISONER	07/17/1995	ADULT	951001685	WALLA WALLA WA
MALICIOUS MISCHIEF 2	09/13/1998	ADULT	981001924	SKAGIT WA
VUCSA/POSSESSION	02/12/1999	ADULT	981004036	SKAGIT WA
Burglary Second	2000	adult	00-1-11104-1	King Co

Overturned  
Convictions

92-1-00030  
Theft 2nd  
Lincoln  
County

[ ] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.360(11)):

Date:

6/19/01

JUDGE, KING COUNTY SUPERIOR COURT

State of Washington )  
 ) SS.  
County of Whatcom )

I, N.F. Jackson, Jr., County Clerk of Whatcom county and ex-officio Clerk of the Superior Court of the State of Washington, for the County of Whatcom, do hereby certify that the foregoing instrument is a true and correct copy of the original, consisting of \_\_\_\_\_ pages, now on file in my office, and that the undersigned has the custody thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at my office at Bellingham, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.  
N.F. Jackson, Jr., County Clerk

By \_\_\_\_\_  
Deputy Clerk

FILED  
COUNTY CLERK

In The Superior Court For The  
State of Washington  
County of Whatcom

JUN 22 AM 7:30

WHATCOM COUNTY  
WASHINGTON

BY \_\_\_\_\_

State of Washington  
Plaintiff,  
Vs.  
Jeffrey S. Brooks  
Defendant

No. 05-1-01763-8  
Motion, CrR 7.8(b)(4).  
Relief From Judgment  
or Order.

## MOTION

Comes now Defendant Jeffrey S. Brooks, and respectfully moves this Court pursuant to Criminal Rule 7.8(b)(4), to resentence the Defendant in a manner consistent with State vs. Zavala-Reynoso 127 Wn. App. 119 110 P.3d 827, and RCW 9A.505(5).

CC. Liz Gallery, Prosecutor  
Carl Munson, Attorney

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2007 JUN 26 AM 11:02

153

## Declaration

I, Jeffrey Brooks, Under penalty of perjury of the laws of the State of Washington, declare:

- I) I am the Defendant in the above-titled Cause of action.
- II) That the Defendant, appeared before Judge Ira J. Lhrig, the State being represented by Liz Gallery of Whatcom County Prosecutors Office, and Defense Attorney Carl Munson representing the Defendant.
- III) That the Defendant went to trial and received a sentence of (120 months) plus 18 to 36 month Community Custody.

## ISSUE

Should this Court declare the Sentence of Jeffrey S. Brooks, Defendant VOID, and resentence him.

## ARGUMENT

This Court should resentence the above mentioned defendant in a manner consistent with State v. Zavala-Reynoso 127 Wn. App. 119 (2005) and RCW 9A.94A 505 (5).



A. On the 18<sup>th</sup> day of October 2006.  
The Defendant, Jeffrey S. Brooks  
Was inadvertently given a sentence  
that exceeds the Statutory Maximum  
as Follows.

B)	Sentence <del>Range</del> Total	RANGE	Community Custody
	Count one - 120 Months	96.75-128.25	18-36 Months
	Count two - 120 Months	96.75-128.25	18-36 Months
	Count three - 120 Months	96.75-128.25	18-36 Months
	Count Four - 84 Months	63-84	18-36 Months

C) Mr. Brooks' Community Custody term  
(18-36 Months), plus his Standard Range Sentence  
(120 Months), exceeds his Statutory Maximum  
term. Thus, the total (138 to 156 Months)  
on its face exceeds the 120 month maximum  
term. State v. Zavola-Reynoso 127 Wn.App (2005)  
Under RCW 9A.505(5), except as provided  
a Court may not impose a sentence  
providing for a term of Confinement  
or Community Supervision, Community placement,  
or Community Custody which exceeds the  
Statutory maximum for the crime as  
provided in Chapter 9A.20. RCW

Since the Sentencing Court imposed a sentence exceeding Mr. Zavala-Reynoso's Statutory maximum, the Court of Appeals vacated his sentence and remanded for resentencing.

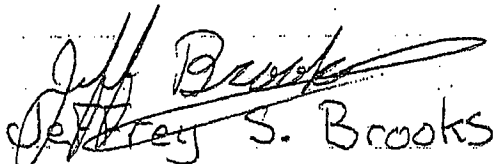
D. Mr. Zavala-Reynoso's 127 Wn App 119 Community Custody term (9-12 months), plus his Standard range sentence (114 months), exceeds his Statutory Maximum term. Thus, the total (123-136 months) on its face exceeds the 120 month maximum term.

E. The State argues because Mr. Zavala-Reynoso will likely receive good-time credit, reducing his sentence, he may still not be incarcerated for the full Standard range sentence. The Court of Appeals disagreed. The Court of Appeals also ruled that if Mr. Zavala-Reynoso does earn credits against his Standard range sentence, he has in a sense served his sentence.

## Conclusion

For the aforementioned reasons this Court should Declare Mr. Brooks' Sentence and Judgment Void, and Resentence him in a manner that is Consistent With the Opinion of the Court of Appeals.

Dated this 16<sup>th</sup> day of June, 2007.

  
Jeffrey S. Brooks  
Pro-Se

FILED  
COUNTY CLERK

07 JUN 22 AM 9:45

WHATCOM COUNTY  
WASHINGTON

BY \_\_\_\_\_

**SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY**

STATE OF WASHINGTON  
vs.

**JEFFREY S. BROOKS**  
Defendant

No. 05-1-01763-8

*60-255-1*

**ORDER TRANSFERRING  
CASE TO COURT OF  
APPEALS COA# 59104-5-1**

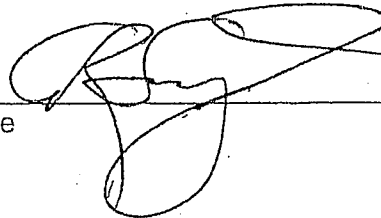
**THIS MATTER**, having come before the Court on the motion(s) of the Defendant filed on June 22, 2007, the Court having reviewed the pleadings and records filed herein, and being otherwise fully informed,

**NOW, THEREFORE**, it is hereby **ORDERED** as follows:

Defendant's Motion under CrR 7.8 (b)(4) is transferred to the Court of Appeals pursuant to CrR 7.8(c) (2) as a personal restraint petition. This transfer will serve the ends of justice.

SIGNED this the 22 day of June, 2007.

Judge



Copy to:

Defendant  
Prosecuting Attorney

FILED  
COURT OF APPEALS DIV #1  
STATE OF WASHINGTON  
2007 JUN 26 AM 11:02

*154*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

IN THE MATTER OF THE  
PERSONAL RESTRAINT OF:

JEFFREY BROOKS,

\_\_\_\_\_  
Petitioner.

) No. 60255-1-I  
)  
)  
)  
)  
)

ORDER OF DISMISSAL

Jeffrey Brooks was convicted of three counts of robbery in the first degree and one count of residential burglary in Whatcom County No. 05-1-01763-8. In this proceeding,<sup>1</sup> Brooks claims that the trial court improperly sentenced him to 120 months' imprisonment to be followed by 18 to 36 months of community custody. A personal restraint petition must set out the facts underlying the challenge and the evidence available to support the factual assertions. In re Pers. Restraint of Rice, 118 Wn.2d 876, 885-86, 828 P.2d 1086 (1992). Unsupported assertions or vague allegations are not sufficient. Rice, 118 Wn.2d at 886. Brooks's assertions do not establish a valid legal basis for granting any relief.

Brooks argues the sentence "exceeds his statutory maximum term." This argument appears to be based on the United States Supreme Court's decision in Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), which held that a defendant's Sixth Amendment right to trial by jury was violated when the trial court imposed a determinate sentence beyond the standard range for the charged offense based on additional findings of fact made by the court. In

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<sup>1</sup> Morris originally sought post-conviction relief in Whatcom County Superior Court, which then transferred the matter to this court for consideration as a personal restraint petition.

so doing, it noted that any fact (other than the fact of a prior conviction) that "increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury," Blakely, 124 S. Ct. at 2536, and that in applying this rule the "statutory maximum" is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely, 124 S. Ct. at 2537.

Unlike the situation in Blakely, there is no showing that the sentences imposed in this case were based on the exceptional sentence provisions of the Sentencing Reform Act of 1981 (SRA). To the contrary, Brooks concedes that the terms of confinement fixed by the sentencing court were within the standard range. And, while Brooks was also required to serve an additional period of community custody, that term did not exceed the "statutory maximum" as that term is defined in Blakely.

Pursuant to RCW 9.94A.715, an offender like Brooks, who is convicted of a violent offense as defined in RCW 9.94A.030(50)(a)(i), is required to serve a period of community custody upon completion of the term of confinement. "Where a defendant is sentenced to the statutory maximum, and also sentenced to community custody, the judgment and sentence should set forth the statutory maximum and clarify that the term of community custody cannot exceed that maximum." State v. Sloan, 121 Wn. App. 220, 221, 87 P.3d 1214 (2004). But because it appears Brooks was convicted of first-degree robbery, which is a class A felony, RCW 9A.56.200(2), the statutory maximum sentence is life imprisonment.

RCW 9A.20.021(1)(a). Under the circumstances, Brooks has no legally protected right to a sentence of lesser duration than the one imposed.

Brooks relies on State v. Zavala-Reynoso, 127 Wn. App. 119, 110 P.3d 827 (2005), to support his argument. His reliance on that case is misplaced, however. Unlike the situation here, the defendant in Zavala-Reynoso was convicted of a class B felony. The sentencing court therefore improperly imposed terms of incarceration (114 months) and community custody (9 to 12 months) that when combined exceeded the statutory maximum of ten years. Zavala-Reynoso, 127 Wn. App. at 124. Because Brooks' robbery convictions have a statutory maximum of life, he fails to establish that his current confinement is unlawful.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under  
RAP 16.11(b).

Done this 10<sup>th</sup> day of September, 2007.

  
Acting Chief Judge

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2007 SEP -6 AM 10:04

SCANNED 1

FILED IN OPEN COURT  
6/5 2008  
WHATCOM COUNTY CLERK

By [Signature]  
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,  
Plaintiff,

vs.

Jeffrey Brooks  
Defendant.

No. 05-1-01763-8

ORDER Amending the Judgment and  
Sentence  
(pursuant to The Court of Appeals Ruling -  
Opinion # 59104-5-1)

THIS MATTER coming before the Court on Remand correcting the Judgment and Sentence as Ordered by the Court of Appeals of the State of Washington # 59104-5-1 filed March 10, 2008. The State, being represented by Deputy Prosecuting Attorney, ELIZABETH GALLERY, and the defendant represented by Carl Munson, and the court being fully informed in the premises based on the record and files herein, NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Judgment and Sentence herein dated and filed October 18<sup>th</sup>, 2006, , shall be and is hereby modified as follows:

Section 4.5(a) shall me amended to read: The total of the term of incarceration and the term of community custody for each counts I, II, and III shall not exceed the statutory maximum of 120 months.

IT IS FURTHER ORDERED that in all other particulars, the terms and conditions of the Judgment and Sentence previously entered which are not in conflict with the above amendment shall remain in full force and effect.

DATED this 5<sup>th</sup> Day of June, 2008.

Presented by:

[Signature]  
ELIZABETH GALLERY WSB#18800  
Deputy Prosecuting Attorney

[Signature]  
JUDGE/COURT COMMISSIONER

Copy Received and Approved:

[Signature]  
Carl Munson WSB# 27297  
Counsel for the Defendant

Whatcom County Prosecuting Attorney  
311 Grand Avenue, Suite #201  
Bellingham, WA 98225  
(360) 676-6784  
(360) 738-2532 Fax  
160



SCANNED 1DOCKETED 62

SCOMIS CODES:

MTHRG ☒HCNTSTP ☐STAHRG ☐NCHRG ☐HSTKIC ☐SCVHRG ☐PLMHRG ☐ARRAIGN ☐DSMHRG ☐HSTKSTP ☐

(Other)

## SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

STATE OF WASHINGTON, Plaintiff,

vs.

BROOKS, JEFFREY SCOTT, Defendant.

No.

05-1-01763-8

JUDGE/COMM

UHRIG

REPORTER/CD

PORTER

CLERK

RHODEFER

DATE

06-05-2008 @ 8:30

This matter comes on for ENTRY/ORDER CC Interpreter appeared \_\_\_\_\_State represented by ELIZABETH L. GALLERY Defendant represented by CARL A. MUNSON JR.Defendant appeared: yes ☐ no ☒; In custody: yes ☐ no ☒; Name as charged ☐ or \_\_\_\_\_State requests BW ☐ Court authorizes issuance of Bench Warrant ☐Defendant is served with true copy of Information ☐ Read ☐ Waived ☐PLEA: NOT GUILTY ☐Defendant acknowledged viewing/understanding advice of rights ☐Defendant acknowledged he/she was advised of basic civil & constitutional rights ☐ and penalty ☐

The following are called, sworn &amp; testified on behalf of State: \_\_\_\_\_

Court finds probable cause ☐ Probable Cause Found Over Weekend ☐Defendant requested counsel ☐Referred to Assigned Counsel Office ☐Court appoints PD ☐State makes recomm. re release ☐ requests bail of \$ \_\_\_\_\_Defense counsel responds ☐COURT SETS BAIL AT \$ \_\_\_\_\_ Court releases defendant on PR ☐Deft agrees to waive speedy trial rights ☐ Waiver of Speedy Trial: FILED ☐ TO BE FILED ☐Continued to: Thursday Calendar for plea ☐ Next Status Calendar ☐ Court 5 day bump ☐Friday Calendar for new trial date ☐ Presence Waived ☐ Presence waived if order signed ☐Strike Jury ☐ Strike Trial Date ☐ Maintain Trial Date ☐

THE DEFENSE:

THE STATE:

agreed order re sentencing

Arraign/Trial Setting/Fugitive Hearing set for \_\_\_\_\_

SET FOR TRIAL: 1 / 08 and/or STATUS 1 / 08

THE COURT: GRANTED / DENIED / SIGNED THE STATE'S / DEFENSE'S MOTION / ORDER

Court entered order amending T&SPREPARED ORDERS SIGNED: DEFT'S ACK/ADVICE RIGHTS ☐ ORDER/WARRANT FUGITIVE COMPLAINT ☐ORDER ON FIRST APPEARANCE OF DEFT ☐WAIVER OF EXTRADITION ☐ (4: Jail = 2, PA = 1, CRT = 1)ORDER FOR PRE-TRIAL RELEASE ☐ORDER TO RELEASE ☐NO CONTACT ORDER ☐AGREED ORDER SETTING TRIAL DATE ☐ORDER FOR BENCH WARRANT ☐ORDER: QUASH WARRANT ☐ORDER OF CONTINUANCE ☐CONTINUED BY COURT ☐ TO \_\_\_\_\_

FOR \_\_\_\_\_

DATE: 06-05-2008

MISCELLANEOUS CRIMINAL [SHEA SC Miscellaneous Criminal Minutes Merge]

APPENDIX

24

FILED  
COUNTY CLERK

2008 JUN -2 AM 9:36

WHATCOM COUNTY  
WASHINGTON

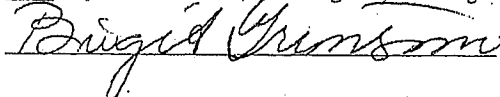
BY 

DECLARATION OF MAILING/DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the below date, a true copy of the foregoing was mailed or caused to be delivered, to:

**CARL MUNSON**

at the regular office or residence or pick up box in the Prosecutor's Office. DATED this 2 day of JUNE 2008, at Bellingham, Washington.



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,  
Plaintiff.

vs.

JEFFREY SCOTT BROOKS,  
Defendant.

No.: 05-1-01763-8

NOTE FOR DOCKET

NOTE FOR MOTION DOCKET

Date of Hearing: JUNE 5, 2008

Please take note that the issue of law in this matter will be heard on the date set out in the margin and the Clerk is requested to note the same on the motion docket for that day.

Time of Hearing: 08:30 a.m.

Nature of Motion:

ENTRY OF ORDER  
AMENDING JUDGMENT  
AND SENTENCE

TO THE CLERK OF THE COURT;  
and the Defendant's counsel of record:

Counsel for Plaintiff:

CARL MUNSON  
Attorney for Defendant

ELIZABETH GALLERY  
Deputy Prosecuting Attorney

NOTE FOR DOCKET - 1

Whatcom County Prosecuting Attorney  
311 Grand Avenue, Suite #201  
Bellingham, WA 98225  
(360) 676-6784  
(360) 738-2532 Fax

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF )  
)  
)  
JEFFREY BROOKS, )  
)  
)  
Petitioner. )

NO. 80704-3

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10<sup>TH</sup> DAY OF NOVEMBER, 2008, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X]	HILARY THOMAS	(X)	U.S. MAIL
	WHATCOM COUNTY PROSECUTING ATTORNEY	( )	HAND DELIVERY
	311 GRAND AVENUE	( )	_____
	BELLINGHAM, WA 98225		
[X]	JEFFREY BROOKS	(X)	U.S. MAIL
	634437	( )	HAND DELIVERY
	WASHINGTON STATE PENITENTIARY	( )	_____
	1313 N 13 <sup>TH</sup> AVENUE		
	WALLA WALLA, WA 99362		

**SIGNED** IN SEATTLE, WASHINGTON THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2008.

X \_\_\_\_\_

Washington Appellate Project  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, Washington 98101  
☎(206) 587-2711